

RESOLUTION NO. 2079

A RESOLUTION APPROVING AN AGREEMENT WITH OREGON BUSINESS DEVELOPMENT DEPARTMENT ACCEPTING A GRANT FROM THEIR BROWNFIELDS REDEVELOPMENT FUND FOR INTEGRATED PLANNING OF THE CITY'S RIVERFRONT RENEWAL SITE

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City desires redevelopment of its former sewage treatment plant site and the adjacent privately owned property, collectively referred to as the Riverfront Renewal site.
2. The property has a variety of issues that must be addressed before it is ready for marketing and sale to a prospective developer.
3. The City submitted a \$25,000 grant request from Business Oregon's Brownfields Redevelopment Fund to assist the City in performing predevelopment planning tasks that better position the property for marketing, sale, and development.
4. The grant request has been approved and the City must execute a grant agreement with the State in order to receive the funds.
5. In order to draw grant funds the City must also designate three individuals who are authorized to make payment requests.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The city administrator is authorized to sign the attached Brownfields Redevelopment Fund Grant Agreement and to sign any addendums to this grant agreement that may arise during the course of the project or any other documents that are necessary to implement the grant award.

Section 2. The city administrator, the community development director and the finance director are delegated to be the City's authorized individuals to request payments from the granting agency and are authorized to sign the attached Signature Card.

Section 3. This resolution shall take effect immediately upon adoption.

YEAS: 5
NAYS: 0
ABSTAINED: 0



Mayor Jim Kight



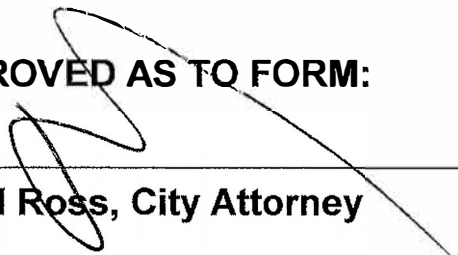
Date



Debbie Stickney, City Recorder

Adopted: November 23, 2010

APPROVED AS TO FORM:



David Ross, City Attorney

**OREGON BUSINESS DEVELOPMENT DEPARTMENT
BROWNFIELDS REDEVELOPMENT FUND
GRANT AGREEMENT**

BETWEEN: State of Oregon, acting by and through its (State)
Oregon Business Development Department
775 Summer Street NE, Suite 200
Salem, Oregon 97301-1280

AND: City of Troutdale (Recipient)
104 Kibling Avenue
Troutdale, Oregon 97060-2099

DATE OF AWARD: October 5, 2010

PROJECT NUMBER: N11003

**SECTION 1
LEGAL BASIS OF AWARD**

Pursuant to ORS 285A.188(2) and OAR 123-135-0000 through 123-135-0110 ("Program Rules"), State is authorized to enter into a grant agreement and to make an award from the Brownfields Redevelopment Fund ("Fund"). State is willing to make the grant on the terms and conditions of this Agreement. Accordingly, the parties agree as follows:

**SECTION 2
GRANT AWARD**

Section 2.01. Grant. In accordance with the terms and conditions of this Agreement, State will provide Recipient with a maximum of \$25,000 ("Grant") from the Brownfields Redevelopment Fund for the activities and purposes set forth in Exhibit A (the "Project"). All expenditures of Grant moneys must be in accordance with the Project budget set forth in Exhibit B.

Section 2.02. Disbursement of Grant Moneys. Subject to Sections 2.03, State will disburse the Grant moneys to Recipient on an expense reimbursement basis, within thirty (30) days after State's receipt of a disbursement request on a form provided by State, accompanied by documentation satisfactory to State of the expenses for which reimbursement is requested. The documentation must include invoices and receipts as applicable. Subject to the availability of undisbursed Grant moneys, each disbursement of Grant moneys under this Section 2.02 will be in an amount equal to the total amount of expenses satisfactorily documented in the disbursement request, provided that any reimbursement of travel expenses cannot exceed the State of Oregon approved rates.

Section 2.03. Conditions Precedent to Each Disbursement. State's obligation to disburse Grant moneys to Recipient pursuant to Section 2.02 is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

(a) The Oregon Department of Administrative Services has not notified the Business Development Department of an anticipated shortfall in Oregon State Lottery revenues for the biennium in which this Agreement becomes effective or for any biennium thereafter;

(b) Moneys are available in the Brownfields Redevelopment Fund to finance the disbursement;

(c) State has received sufficient appropriations and other expenditure authorizations to allow State, in the reasonable exercise of its administrative discretion, to make the disbursement;

(d) No default as described in Section 6.03 has occurred and is continuing;

(e) Recipient's representations and warranties set forth in Section 4 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

Section 2.04. Grant Availability Termination. The availability of Grant moneys under this Agreement and State's obligation to disburse Grant moneys pursuant to Section 2.02 ends on the earlier of thirty (30) days after the date the Project is completed or thirty (30) days after the Project completion deadline set forth in Section 5.01 (the "Availability Termination Date"). Recipient will not submit any disbursement requests and State will not disburse any Grant moneys after the Availability Termination Date.

SECTION 3 USES OF GRANT

Section 3.01. Uses of Grant. Recipient's use of the Grant moneys is limited to those activities necessary to complete the Project. Recipient will not use the Grant moneys to retire any debt. Recipient must provide documentation acceptable to the State for all requested expenditures, including, but not limited to the nature of the activity, when it took place, cost details, and applicable receipts and invoices.

SECTION 4 RECIPIENT'S REPRESENTATIONS AND WARRANTIES

Recipient represents and warrants to State as follows:

Section 4.01. Existence and Power. Recipient is a municipality as described in ORS 285B.410(8), duly organized and validly existing under the laws of Oregon; and Recipient has full power, authority and legal right to execute and deliver this Agreement and to incur and perform its obligations hereunder.

Section 4.02. Authority, No Contravention. The making and performance by Recipient of this Agreement (a) have been duly authorized by all necessary action of Recipient, (b) do not and will not violate any provision of any applicable law, rule, regulation or order of any court, regulatory commission, board or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected.

Section 4.03. Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of Recipient and constitutes the legal, valid, and binding obligation of Recipient, enforceable in accordance with its terms.

Section 4.04. Approvals. No further authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

SECTION 5 RECIPIENT'S AGREEMENTS

Section 5.01. Project Completion. Recipient will complete the Project within twenty-four months from the date of execution of this Agreement.

Section 5.02. Notifications. Recipient will reasonably acknowledge in some public fashion, such as in promotional materials, on its web site and in public statements, that the Project was funded in part with Oregon State Lottery Funds administered by the Oregon Business Development Department.

Section 5.03. Semi-Annual Reports. Recipient shall provide State with semi-annual reports (due July 15 and January 15) in the form of Exhibit C, until the Project is complete. At its sole discretion, State may waive this reporting requirement upon written notice to Recipient.

Section 5.04. Final Report. Within thirty (30) days after the completion of the Project, but no later than thirty (30) days after the date set forth in Section 5.01, Recipient will submit to State a final report on the Project as provided by the State in the form of Exhibit D.

Section 5.05. Books, Inspection. Recipient will keep proper books of account and records on all activities associated with the Grant, including, but not limited to, invoices, cancelled checks, instruments, agreements and other supporting financial records documenting the use of the Grant. Recipient will maintain these books of account and records in accordance with generally accepted accounting principles and will retain these books of account and records at least until three years after the later of the Availability Termination Date or the date that all disputes, if any, arising under this Agreement have been resolved.

Recipient will permit State, the Secretary of State of the State of Oregon, or their duly authorized representatives to inspect its properties, all work done, labor performed and materials furnished in and about the Project, and to review and make excerpts, transcripts, and copies of its books of account and records with respect to the receipt and disbursement of funds received from State. The authorized representatives will have access to these books of account and records for as long as those books of account and records are required to be maintained by Recipient pursuant to this Section 5.05; provided that if such records are kept for a longer period, the authorized representatives shall have access to these records for as long as they are kept by Recipient.

Section 5.06. Compliance with Laws. Recipient will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, except to the extent an order of a governmental authority is contested in good faith and by proper proceedings. Applicable laws and rules include, but are not limited to: Workers' Compensation laws (ORS Chapter 656); Wages, Hours and Records Laws (ORS Chapter 652); Conditions of Employment Laws (ORS Chapter 643); and Unemployment Insurance (ORS Chapter 657).

Section 5.07. Responsibility for Taxes. Recipient will be responsible for all taxes, if any, arising from or related to Recipient's receipt of the Grant. State will not withhold from the disbursements made to Recipient hereunder, any amounts to cover Recipient's tax liability.

Section 5.08. Minority, Women & Emerging Small Business. ORS 200.090 requires all public agencies to "aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses..." The Oregon Business Development Department encourages Recipient in any contracting activities to follow good faith efforts in ORS 200.045, which may be accessed at <http://www.leg.state.or.us/ors/200.html>. Additional resources are provided by the Governor's Advocate for Minority, Women & Emerging Small Business at <http://egov.oregon.gov/Gov/MWESB/index.shtml>. Also, the Office of Minority, Women, and Emerging Small Business at the Department of Consumer and Business Services maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <http://imd10.cbs.state.or.us/ex/dir/omwesb/>.

Section 5.09. Economic Benefit Data. State may request that Recipient submit specific requested data on the economic development benefits of the Project, from the date hereof until six (6) years after the Project completion date. Upon such request by State, Recipient will, at Recipient's expense, prepare and file the requested data within the time specified in the request. Data must include specific requested information such as any new direct permanent or retained jobs resulting from the Project and other information to evaluate the success and economic impact of the Project.

SECTION 6
TERMINATION AND DEFAULT; REMEDIES

Section 6.01. Mutual Termination. This Agreement may be terminated by mutual consent of both parties.

Section 6.02. Termination by State. State may terminate this Agreement effective upon written notice to Recipient, or at such later date as may be established by State in such notice, under any of the following circumstances: (a) the Oregon Department of Administrative Services notifies State of an anticipated shortfall in Oregon State Lottery revenues, (b) State fails to receive sufficient appropriations or other expenditure authorizations to allow State, in the reasonable exercise of its administrative discretion, to continue making payments under this Agreement, (c) there are not sufficient funds in the Fund to permit State to continue making payments under this Agreement, (d) there is a change in federal or state laws, rules, regulations or guidelines so that the Project funded by this Agreement is no longer eligible for funding, or (e) in accordance with Section 6.04.

Section 6.03. Default. Recipient will be in default under this Agreement upon the occurrence of any of the following events:

(a) Recipient fails to perform, observe or discharge any of its covenants, agreements or obligations contained herein or in any exhibit attached hereto; or

(b) Any representation, warranty or statement made by Recipient herein or in any documents or reports relied upon by State to measure progress on the Project, the expenditure of Grant moneys or the performance by Recipient is untrue in any material respect when made; or

(c) Recipient (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, or (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code; or

(d) A proceeding or case is commenced, without the application or consent of Recipient, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Recipient, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Recipient or of all or any substantial part of its assets, or (iii) similar relief in respect to Recipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Recipient is entered in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect).

Section 6.04. Remedies Upon Default. If Recipient's default is not cured within thirty (30) days of written notice thereof to Recipient from State or such longer period as State may authorize in its sole discretion, State may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement, return of all or a portion of the Grant amount, payment of interest earned on the Grant amount, and declaration of ineligibility for the Grant Agreement

receipt of future Fund awards. If, as a result of Recipient's default, State demands return of all or a portion of the Grant amount or payment of interest earned on the Grant amount, Recipient will pay the amount upon State's demand. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

SECTION 7 MISCELLANEOUS

Section 7.01. No Implied Waiver. No failure or delay on the part of State to exercise any right, power, or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

Section 7.02. Choice of Law; Designation of Forum; Federal Forum.

(a) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(b) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(c) Notwithstanding Section 7.02(b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

Section 7.03. Notices. Except as otherwise expressly provided in this Agreement, any required or permitted notice will be given in writing by personal delivery, facsimile, or by mail, postage prepaid, to Recipient or State at the address or number on page 1 of this Agreement, or to such other addresses or numbers as either party may subsequently indicate pursuant to this Section 7.03. Any notice so addressed and mailed will be deemed to be given five (5) days after mailing. Any notice delivered by facsimile will be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any notice by personal delivery will be deemed to be given when actually delivered.

Section 7.04. Amendments. This Agreement may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.

Section 7.05. Severability. If any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision.

Section 7.06. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of State, Recipient, and their respective successors and assigns, except that Recipient may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of State.

Section 7.07. Indemnity. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Recipient will (subject to ORS chapter 180) defend, save, hold harmless and indemnify the State of Oregon, the Oregon Business Development Department and their officers, agents, employees, and members from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from or arising out of, or relating to the activities of Recipient or its officers, employees, contractors, or agents under this Agreement.

Section 7.08. Titles and Subtitles. The titles in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.

Section 7.09. Counterparts. This Agreement may be executed in more than one counterpart, which, taken together, will constitute one and the same instrument, and either party may execute this Agreement by signing any such counterpart.

Section 7.10. No Third Party Beneficiaries. State and Recipient are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives or provides, or is intended to give or provide, to third persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

Section 7.11. Entire Agreement. This Agreement (including any attachments hereto which are by this reference incorporated herein) constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Any waiver or consent, if made, will be effective only if in writing signed by the party against whom such waiver or consent is sought to be enforced and is effective only in the specific instance and for the specific purpose given.

Section 7.12. Survival. All provisions of this Agreement set forth in the following sections and any that by their terms are intended to survive shall survive termination of this Agreement: Section 3.02. Unexpended Grant Moneys; Section 5.05. Books; Inspection; Section 5.10. Special Conditions; Section 6.04. Remedies Upon Default; Section 7.07. Indemnity; and this Section 7.12.

Section 7.13. Time is of the Essence. Recipient agrees that time is of the essence under this Agreement.

Section 7.14. Attorney Fees. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement will be entitled to recover from the other its reasonable attorney fees and costs and expenses at trial, in a bankruptcy, receivership or similar proceeding, and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys.

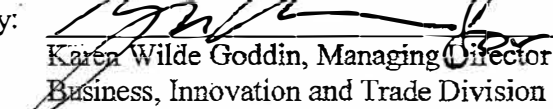
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signature and approved as required by applicable laws. The Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

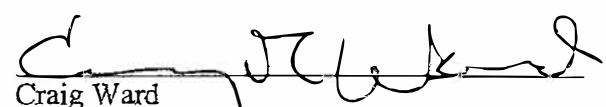


STATE OF OREGON

CITY OF TROUTDALE

acting by and through its Business Development
Department

By: 
Karen Wilde Goddin, Managing Director
Business, Innovation and Trade Division

By: 
Craig Ward
City Administrator

Date: 12-2-10

Date: 11/29/10

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

NA per OAR 137-045-0030

- Exhibit A: Project
- Exhibit B: Project Budget
- Exhibit C: Semi-Annual Report Form
- Exhibit D: Final Report Form

**EXHIBIT A
PROJECT**

Recipient will complete the following predevelopment planning activities focused on conceptual plans and actions necessary to identify the redevelopment prospects of 302, 320 & 410 NW 257th Way, Troutdale, Oregon:

1. Concept Planning such as concept site plans for various development scenarios including relevant project pro formas and marketing materials;
2. Site Development Planning including review of transportation access issues; development of interim use plans; and identification of site development funding sources; and,
3. Site Clearance Planning with focus on the evaluation of financing options to fund removal of existing site

**Oregon Business Development Department
Project Budget**

Project Number: N11003
Project Name: Troutdale Riverfront Integrated Planning Project

Recipient: City of Troutdale
Funding Pgm(s): Brownfields Redevelopment Fund - Grant

Portfol #260-03-01

CTS#033900042

(A)	Department Funds				Other/Matching Funds			All Funds
	(B)	(C)	(D)	(E) = [B-C-D]	(F)	(G)	(H) = [F-G]	(I) = [C+D+G]
Activity	Approved Budget	Prior Disbursements	Current Request	Balance	Approved Budget	Expended To Date	Balance	Disbursed & Expended To Date
Concept Planning	\$12,000			\$12,000	\$2,000		\$2,000	
Site Development Planning	6,000			6,000	3,000		3,000	
Site Clearance Planning	7,000			7,000				
Total	\$25,000			\$25,000	\$5,000		\$5,000	

Total Project Budget		
Funding Sources	Approved Budget	Expenditures To Date
Brownfields Redevelopment Fund - Grant	\$25,000	
Other/Matching Funds	5,000	
Total Project Costs	\$30,000	

Non-Department Funds (Other/Matching) Sources Used for all Expenditures		
Funding Sources	Approved Budget	Expenditures To Date
City of Troutdale	5,000	
Total Non-Dept. Funds	\$5,000	

Non-Department Funds (Other/Matching) IN-KIND		
Source of In-Kind Contribution	Goods/Services Donated	Value of Contribution To Date
In-Kind Contributions To Date		

**EXHIBIT C
SEMI-ANNUAL STATUS REPORT**

For the Period _____ to _____

Number: N11003
 Project: City of Troutdale - Troutdale Riverfront Integrated Planning Project
 Recipient: City of Troutdale
 Contact: Rich Faith, Community Development Director Phone: 503-674-7261
 Official Signatory: Craig Ward, City Administrator Phone: _____
 E-Mail: rfaith@ci.troutdale.or.us FAX: _____
 Date Funds Awarded: October 5, 2010
 Project Completion Deadline: June 1, 2011

1. Status of Work Plan

Task	Original Estimated Date of Completion	New Estimated Date of Completion (if applicable)	Actual Date of Completion
Site Clearance Planning Complete	December 2010		
Site Development Planning Complete	February 2011		
Concept Design Planning Complete	April 2011		
Project Complete	June 2011		

**EXHIBIT C
SEMI-ANNUAL STATUS REPORT**

For the Period _____ to _____

2. Work Accomplished During Reporting Period

Please indicate the work that was accomplished on your work plan during the reporting period. For any delays in completing your work plan or any problems encountered, please explain how these will be resolved.

3. Will your project be complete by the date required in your contract? Yes No

If no, what is the estimated date of completion? _____

4. Signatures

Preparer's Signature

Official Signature

Date

Date

**EXHIBIT D
FINAL REPORT**

Number: N11003
 Project: City of Troutdale - Troutdale Riverfront Integrated Planning Project
 Recipient: City of Troutdale
 Contact: Rich Faith, Community Development Director
 Official Signatory: Craig Ward, City Administrator
 E-Mail: rfaith@ci.troutdale.or.us
 Date Funds Awarded: October 5, 2010

FINANCIAL SUMMARY

1. Summary of Project Cost

Activity	Department Funds Spent	Other/Matching Funds Spent	Total Project Costs
Site Clearance Planning Complete			
Site Development Planning Complete			
Concept Design Planning Complete			
Project Complete			
TOTALS			

2. Sources of Funding – Cash

Funding Sources	Approved Budget	Actual Expenditures
Brownfields Redevelopment Fund	\$25,000	
TOTALS	\$25,000	

3. Sources of Other Funding – Cash/In-Kind

Funding Sources	Approved Budget	Actual Expenditures
TOTALS		

EXHIBIT D
FINAL REPORT

Accomplishments

Please provide a brief summary of your Project, including problems addressed, lessons learned, major activities completed and any other accomplishments related to your Project. Please also attach any final reports or documents from environmental consultants or regulatory agencies relating to the environmental action performed.

CERTIFICATION OF RECIPIENT

The undersigned hereby certifies that (1) all activities undertaken with funds provided under the Recipient's contract with the State of Oregon Economic and Community Development Department have been completed in accordance with the terms of that contract; (2) proper provision has been made by the Recipient for the payment of all unpaid costs and unsettled third-party claims identified; (3) the State of Oregon is under no obligation to make any further payment to the Recipient under the contract identified above; and (4) every statement and amount set forth in this Project Completion Report is, to the best of the knowledge of the undersigned, true and correct as of this date.

Preparer's Signature

Official Signature

Typed or Printed Name

Typed or Printed Name

Date

Date